

REMARKS

Claims 1-3, 8-12 and 17 are pending. Claims 5, 6, 7, 14, 15, and 17 have been canceled without acquiescence and without prejudice. Claims 1 and 10 have been amended without acquiescence and without prejudice. Applicants assert that no new matter has been added. Applicants retain the right to file any continuation and/or divisional application to any canceled subject matter. The outstanding issues of this Office Action are:

- Claims 1-3, 5-12, and 14-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable in view of co-pending US Application Nos. 10/264,886 and 10/891,895.
- Claims 1-3, 5-12, and 14-17 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Hand et al. in view of Cunningham (Archer Daniels Midland forms joint venture to produce fat-fighting oil. Archer Daniel Midland Company; News Release, June 13, 2001).

Applicants respectfully traverse the outstanding rejections, and Applicants respectfully request reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

I. Rejection under Provisional Double Patenting

Claims 1-3, 5-12, and 14-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable in view of co-pending US Application Nos. 10/264,886 and 10/891,895. Applicants traverse.

The Court of Claims and Patent Appeals (now the Court of Appeals for the Federal Circuit) has stated: "Once the provisional rejection has been made, there is nothing the examiner and the applicant must do until the other application issues." *In re Mott*, 190 U.S.P.Q. 536, 541 (C.C.P.A. 1976) (emphasis added). M.P.E.P. § 804 allows for the prosecution to continue while

a provisional double-patenting rejection is pending and even instructs the Office to continue to make such a provisional rejection until one of the applications issues as a patent.

Thus, Applicants request that this rejection be held in abeyance until the conflicting claims are in fact patented.

II. Rejection under 35 U.S.C. 103(a)

Claims 1-3, 5-12, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hand et al. in view of Cunningham (Archer Daniels Midland forms joint venture to produce fat-fighting oil. Archer Daniel Midland Company: News Release, June 13, 2001).

Applicants assert that the present references relied upon by the Examiner clearly fail to establish a *prima facie* case of obviousness. More particularly, the Examiner has not established the motivation to combine Hand et al. with Cunningham. Applicants assert that neither of these references teach or suggest the pet food product of the present invention. However, in order to advance the prosecution of the present application, Applicants have amended without prejudice and without acquiescence independent claims 1 and 10 to remove diacylglyceride.

Thus, in view of the presently amended claims, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

In view of the above, applicant believes the pending application is in condition for allowance. If the Examiner believes that there are any outstanding issues, the Examiner is requested to contact the below undersigned for a quick resolution.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 06-2375, under Order No. HO-P02206US0 from which the undersigned is authorized to draw.

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Respectfully submitted,

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